EXHIBIT A

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

BARBARA HUBBARD, Plaintiff, vs. LAKHA PROPERTIES - SAN DIEGO, LLC, Defendant.	Case No. 07cv2303 DMS (RBB) **Plaintiff's [Proposed] First Amended Complaint** Honorable Judge Dana M. Sabraw

I. SUMMARY

1. This is a civil rights action by plaintiff Barbara Hubbard ("Hubbard") for discrimination at the building, structure, facility, complex, property, land, development, and/or surrounding business complex known as:

University Square
5881-5931 University Avenue
San Diego, CA 92115
(hereafter "the Facility")

2. Hubbard seeks damages, injunctive and declaratory relief, attorney fees and costs, against Lakha Properties - San Diego, LLC (hereinafter referred to as "Lakha") pursuant to the Americans with Disabilities Act of 1990, (42 U.S.C. §§ 12101 et seq.), and related California statutes.

II. JURISDICTION

3. This Court has original jurisdiction under 28 U.S.C. §§ 1331 and 1343 for ADA claims.

4. Supplemental jurisdiction for claims brought under parallel California law—arising from the same nucleus of operative facts—is predicated on 28 U.S.C. § 1367.

5. Hubbard's claims are authorized by 28 U.S.C. §§ 2201 and 2202.

III. VENUE

6. All actions complained of herein take place within the jurisdiction of the United States District Court, Southern District of California, and venue is invoked pursuant to 28 U.S.C. § 1391(b), (c).

IV. PARTIES

7. Lakha owns, operates, and/or leases the Facility, and consists of a person (or persons), firm, or corporation.

8. Hubbard has multiple conditions that affect one or more major life functions. Plaintiff requires the use of motorized wheelchair and a mobility-equipped vehicle, when traveling about in public. Consequently, Hubbard is “physically disabled,” as defined by all applicable California and United States laws, and a member of the public whose rights are protected by these laws.

V. FACTS

9. The Facility is an establishment open to the public, which is intended for nonresidential use and whose operation affects commerce.

10. Hubbard visited the Facility and encountered barriers (both physical and intangible) that interfered with—if not outright denied—her ability to use and enjoy the goods, services, privileges, and accommodations offered at the Facility. To the extent known by Hubbard, the barriers at the Facility included, but are not limited to, the following:

In front of the Hollywood Video:

- The tow away signage is not correct;
- The signage at the van accessible parking stall is not correct (there is not a separate sign stating “van accessible”);
- The access aisle has a slope and cross slope exceeding 2.0% due to the encroaching built-up curb ramp;
- The access aisle does not have the words “NO PARKING” painted within;
- The disabled parking spaces are not the correct size

In front of the 99 Cent Store:

- The disabled parking spaces are not marked as such with the correct signage;
- The access aisle does not have the words “NO PARKING” painted within;

- There is no marked crossing where the accessible path from the disabled parking space to the store's entrance crosses into the vehicular way;
- The western-most disabled parking space has a slope and cross slope that exceed 2.0%;

In front of the Hometown Buffet Restaurant:

- There is an abrupt change in elevation in the access aisle furthest to the east;
- The access aisle has a slope and cross slope that exceed 2.0%;
- The disabled parking spaces have slopes and cross slopes that exceed 2.0%;
- There is no marked crossing where the accessible path from the disabled parking space to the restaurant's entrance crosses into the vehicular way;

In front of University Nutrition:

- Both disabled spaces lack the required signage
- The disabled spaces are arranged so that to reach the entrance of the store, one must travel behind parked vehicles;

In front of the IHOP restaurant:

- There is no marked crossing where the accessible path from the disabled parking space to the restaurant's entrance crosses into the vehicular way;
- The disabled spaces do not have the correct signage posted;
- The access aisle has a slope and cross slope exceeding 2.0% due to the encroaching built-up curb ramp;
- The words "NO PARKING" are not painted within the access aisle;

In front of the Carl's Jr. Restaurant:

- The tow away signage posted is not correct – it uses the word "handicapped;"
- The disabled parking spaces are not the correct size;
- The disabled parking space have cross slopes that exceed 2.0%;
- The access aisle has a slope and cross slope exceeding 2.0% due to the encroaching built-up curb ramp;
- If using the disabled parking spaces provided, one must travel behind parked vehicles to reach the restaurant's entrance;
- There is no marked crossing where the accessible path from the disabled parking space to the restaurant's entrance crosses into the vehicular way.

These barriers prevented Hubbard from enjoying full and equal access to the Facility.

11. Hubbard was also deterred from visiting the Facility because she knew that the Facility's goods, services, facilities, privileges, advantages, and accommodations were unavailable to physically disabled patrons (such as herself). She continues to be deterred from visiting the Facility because of the future threats of injury created by these barriers.

12. Hubbard also encountered barriers at the Facility, which violate state and federal law, but were unrelated to her disability. Nothing within this Complaint, however, should be construed as an allegation that Hubbard is seeking to remove barriers unrelated to her disability.

13. Lakha knew that these elements and areas of the Facility were inaccessible, violate state and federal law, and interfere with (or deny) access to the physically disabled. Moreover, Lakha has the financial resources to remove these barriers from the Facility (without much difficulty or expense), and make

the Facility accessible to the physically disabled. To date, however, Lakha refuses to either remove those barriers or seek an unreasonable hardship exemption to excuse non-compliance.

14. At all relevant times, Lakha has possessed and enjoyed sufficient control and authority to modify the Facility to remove impediments to wheelchair access and to comply with the Americans with Disabilities Act Accessibility Guidelines and Title 24 regulations. Lakha has not removed such impediments and has not modified the Facility to conform to accessibility standards. Lakha has intentionally maintained the Facility in its current condition and has intentionally refrained from altering the Facility so that it complies with the accessibility standards.

15. Hubbard further alleges that the (continued) presence of barriers at the Facility is so obvious as to establish Lakha's discriminatory intent.[1] On information and belief, Hubbard avers that evidence of this discriminatory intent includes Lakha's refusal to adhere to relevant building standards; disregard for the building plans and permits issued for the Facility; conscientious decision to the architectural layout (as it currently exists) at the Facility; decision not to remove barriers from the Facility; and allowance that the Facility continues to exist in its non-compliant state. Hubbard further alleges, on information and belief, that Lakha is not in the midst of a remodel, and that the barriers present at the Facility are not isolated (or temporary) interruptions in access due to maintenance or repairs.[2]

VI. FIRST CLAIM

Americans with Disabilities Act of 1990

Denial of "Full and Equal" Enjoyment and Use

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[1] E.g., *Gunther v. Lin*, 144 Cal.App.4th 223, fn. 6

[2] Id.; 28 C.F.R. § 36.211(b)

16. Hubbard incorporates the allegations contained in paragraphs 1 through 15 for this claim.

17. Title III of the ADA holds as a "general rule" that no individual shall be discriminated against on the basis of disability in the full and equal enjoyment (or use) of goods, services, facilities, privileges, and accommodations offered by any person who owns, operates, or leases a place of public accommodation. 42 U.S.C. § 12182(a).

18. Lakha discriminated against Hubbard by denying "full and equal enjoyment" and use of the goods, services, facilities, privileges or accommodations of the Facility during each visit and each incident of deterrence.

Failure to Remove Architectural Barriers in an Existing Facility

19. The ADA specifically prohibits failing to remove architectural barriers, which are structural in nature, in existing facilities where such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). The term "readily achievable" is defined as "easily accomplishable and able to be carried out without much difficulty or expense." Id. § 12181(9).

20. When an entity can demonstrate that removal of a barrier is not readily achievable, a failure to make goods, services, facilities, or accommodations available through alternative methods is also specifically prohibited if these methods are readily achievable. Id. § 12182(b)(2)(A)(v).

21. Here, Hubbard alleges that Lakha can easily remove the architectural barriers at the Facility without much difficulty or expense, and that Lakha violated the ADA by failing to remove those barriers, when it was readily achievable to do so.

22. In the alternative, if it was not "readily achievable" for Lakha to remove the Facility's barriers, then Lakha violated the ADA by failing to make

the required services available through alternative methods, which are readily achievable.

Failure to Design and Construct an Accessible Facility

23. On information and belief, the Facility was designed or constructed (or both) after January 26, 1992—independently triggering access requirements under Title III of the ADA.

24. The ADA also prohibits designing and constructing facilities for first occupancy after January 26, 1993, that aren't readily accessible to, and usable by, individuals with disabilities when it was structurally practicable to do so. 42 U.S.C. § 12183(a)(1).

25. Here, Lakha violated the ADA by designing or constructing (or both) the Facility in a manner that was not readily accessible to the physically disabled public—including Hubbard—when it was structurally practical to do so.[3]

Failure to Make an Altered Facility Accessible

26. On information and belief, the Facility was modified after January 26, 1992, independently triggering access requirements under the ADA.

27. The ADA also requires that facilities altered in a manner that affects (or could affect) its usability must be made readily accessible to individuals with disabilities to the maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering an area that contains a facility's primary function also requires adding making the paths of travel, bathrooms, telephones, and drinking fountains serving that area accessible to the maximum extent feasible. Id.

[3] Nothing within this Complaint should be construed as an allegation that plaintiff is bringing this action as a private attorney general under either state or federal statutes.

28. Here, Lakha altered the Facility in a manner that violated the ADA and was not readily accessible to the physically disabled public—including Hubbard—to the maximum extent feasible.

Failure to Modify Existing Policies and Procedures

29. The ADA also requires reasonable modifications in policies, practices, or procedures, when necessary to afford such goods, services, facilities, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter their nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

30. Here, Lakha violated the ADA by failing to make reasonable modifications in policies, practices, or procedures at the Facility, when these modifications were necessary to afford (and would not fundamentally alter the nature of) these goods, services, facilities, or accommodations.

31. Hubbard seeks all relief available under the ADA (*i.e.*, injunctive relief, attorney fees, costs, legal expense) for these aforementioned violations. 42 U.S.C. § 12205.

32. Hubbard also seeks a finding from this Court (*i.e.*, declaratory relief) that Lakha violated the ADA in order to pursue damages under California's Unruh Civil Rights Act or Disabled Persons Act.

VII. SECOND CLAIM

Disabled Persons Act

33. Hubbard incorporates the allegations contained in paragraphs 1 through 32 for this claim.

34. California Civil Code § 54 states, in part, that: Individuals with disabilities have the same right as the general public to the full and free use of the streets, sidewalks, walkways, public buildings and facilities, and other public places.

35. California Civil Code § 54.1 also states, in part, that: Individuals with disabilities shall be entitled to full and equal access to accommodations, facilities, telephone facilities, places of public accommodation, and other places to which the general public is invited.

36. Both sections specifically incorporate (by reference) an individual's rights under the ADA. See Civil Code §§ 54(c) and 54.1(d).

37. Here, Lakha discriminated against the physically disabled public—including Hubbard—by denying them full and equal access to the Facility. Lakha also violated Hubbard's rights under the ADA, and, therefore, infringed upon or violated (or both) Hubbard's rights under the Disabled Persons Act.

38. For each offense of the Disabled Persons Act, Hubbard seeks actual damages (both general and special damages), statutory minimum damages of one thousand dollars ($1,000), declaratory relief, and any other remedy available under California Civil Code § 54.3.

39. She also seeks to enjoin Lakha from violating the Disabled Persons Act (and ADA) under California Civil Code § 55, and to recover reasonable attorneys' fees and incurred under California Civil Code §§ 54.3 and 55.

VIII. THIRD CLAIM

Unruh Civil Rights Act

40. Hubbard incorporates the allegations contained in paragraphs 1 through 39 for this claim.

41. California Civil Code § 51 states, in part, that: All persons within the jurisdiction of this state are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.

42. California Civil Code § 51.5 also states, in part, that: No business establishment of any kind whatsoever shall discriminate against any person in this state because of the disability of the person.

43. California Civil Code § 51(f) specifically incorporates (by reference) an individual's rights under the ADA into the Unruh Act.

44. Lakha's aforementioned acts and omissions denied the physically disabled public—including Hubbard—full and equal accommodations, advantages, facilities, privileges and services in a business establishment (because of their physical disability).

45. These acts and omissions (including the ones that violate the ADA) denied, aided or incited a denial, or discriminated against Hubbard by violating the Unruh Act.

46. Hubbard was damaged by Lakha's wrongful conduct, and seeks statutory minimum damages of four thousand dollars ($4,000) for each offense.

47. Hubbard also seeks to enjoin Lakha from violating the Unruh Act (and ADA), and recover reasonable attorneys' fees and costs incurred under California Civil Code § 52(a).

IX. FOURTH CLAIM

Denial of Full and Equal Access to Public Facilities

48. Hubbard incorporates the allegations contained in paragraphs 1 through 47 for this claim.

49. Health and Safety Code § 19955(a) states, in part, that: California public accommodations or facilities (built with private funds) shall adhere to the provisions of Government Code § 4450.

50. Health and Safety Code § 19959 states, in part, that: Every existing (non-exempt) public accommodation constructed prior to July 1, 1970, which is altered or structurally repaired, is required to comply with this chapter.

51. Hubbard alleges the Facility is a public accommodation constructed, altered, or repaired in a manner that violates Part 5.5 of the Health and Safety Code or Government Code § 4450 (or both), and that the Facility was not exempt under Health and Safety Code § 19956.

52. Lakha's non-compliance with these requirements at the Facility aggrieved (or potentially aggrieved) Hubbard and other persons with physical disabilities. Accordingly, she seeks injunctive relief and attorney fees pursuant to Health and Safety Code § 19953.

X. PRAYER FOR RELIEF

WHEREFORE, Hubbard prays judgment against Lakha for:

1. Injunctive relief, preventive relief, or any other relief the Court deems proper.

2. Declaratory relief that Lakha violated the ADA for the purposes of Unruh Act or Disabled Persons Act damages.

3. Statutory minimum damages under either sections 52(a) or 54.3(a) of the California Civil Code (but not both) according to proof.

4. Attorneys' fees, litigation expenses, and costs of suit.[4]

5. Interest at the legal rate from the date of the filing of this action.

DATED: April 8, 2008

LAW OFFICES OF LYNN HUBBARD

/s/ Lynn Hubbard, III, Esquire
LYNN HUBBARD, III
Attorney for Plaintiff Barbara Hubbard

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[4] This includes attorneys' fees under California Code of Civil Procedure § 1021.5.